

108TH CONGRESS
1ST SESSION

S. 587

To promote the use of hydrogen fuel cell vehicles, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2003

Mr. WYDEN introduced the following bill; which was read twice and referred
to the Committee on Finance

A BILL

To promote the use of hydrogen fuel cell vehicles, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hydrogen Transpor-
5 tation Wins Over Growing Reliance on Oil (H2 GROW)
6 Act”.

7 **SEC. 2. REFERENCES; TABLE OF CONTENTS.**

8 (a) REFERENCES.—Except as otherwise expressly
9 provided, whenever in this Act an amendment or repeal
10 is expressed in terms of an amendment to, or repeal of,
11 a section or other provision, the reference shall be consid-

1 ered to be made to a section or other provision of the In-
 2 ternal Revenue Code of 1986.

3 (b) TABLE OF CONTENTS.—The table of contents of
 4 this Act is as follows:

Sec. 1. Short title.

Sec. 2. References; table of contents.

TITLE I—HYDROGEN FUEL CELL VEHICLES

Sec. 101. Fuel cell vehicle credit.

Sec. 102. No depreciation limit for hydrogen vehicles.

Sec. 103. Minimum Federal fleet requirement.

Sec. 104. Replacement of reliance on foreign oil through hydrogen powered fuel
 cells.

TITLE II—HYDROGEN FUEL

Sec. 201. Credit for retail sale of hydrogen fuel as motor vehicle fuel.

Sec. 202. Credit for production of hydrogen fuel.

Sec. 203. Tax holiday for hydrogen fuel.

Sec. 204. Sense of Congress regarding hydrogen fuel taxes.

Sec. 205. Hydrogen fueling fringe benefit.

Sec. 206. Exclusion of earnings from hydrogen fuel sales.

Sec. 207. Credit for use of ethanol or renewable motor fuel to produce hydro-
 gen fuel.

TITLE III—HYDROGEN FUELING INFRASTRUCTURE

Sec. 301. Credit for installation of hydrogen fueling stations.

Sec. 302. Exclusion of earnings from hydrogen fueling equipment sales.

Sec. 303. Extension of deduction for hydrogen fueling infrastructure.

Sec. 304. Deduction for refueling use of hydrogen fuel cells.

Sec. 305. Accelerated depreciation for qualified hydrogen fueling equipment.

5 **TITLE I—HYDROGEN FUEL CELL** 6 **VEHICLES**

7 **SEC. 101. FUEL CELL VEHICLE CREDIT.**

8 (a) IN GENERAL.—Subpart B of part IV of sub-
 9 chapter A of chapter 1 (relating to foreign tax credit, etc.)
 10 is amended by adding at the end the following new section:

1 **“SEC. 30B. FUEL CELL VEHICLE CREDIT.**

2 “(a) ALLOWANCE OF CREDIT.—There shall be al-
 3 lowed as a credit against the tax imposed by this chapter
 4 for the taxable year an amount equal to the new qualified
 5 fuel cell motor vehicle credit determined under subsection
 6 (b).

7 “(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE
 8 CREDIT.—

9 “(1) IN GENERAL.—For purposes of subsection
 10 (a), the new qualified fuel cell motor vehicle credit
 11 determined under this subsection with respect to a
 12 new qualified fuel cell motor vehicle placed in service
 13 by the taxpayer during the taxable year is equal
 14 to—

15 “(A) in the case of any vehicle placed in
 16 service before 2010, the lesser of—

17 “(i) 25 percent of the retail sale price
 18 of such fuel cell motor vehicle, or

19 “(ii) \$50,000

20 “(B) in the case of any vehicle placed in
 21 service after 2009 and before 2012, the lesser
 22 of—

23 “(i) 15 percent of the retail sale price
 24 of such fuel cell motor vehicle, or

25 “(ii) \$25,000, and

“(C) in the case of any vehicle placed in service after 2012, the lesser of—

“(i) 5 percent of the retail sale price of such fuel cell motor vehicle, or

“(ii) \$10,000.

“(2) INCREASE FOR FUEL EFFICIENCY.—

“(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

“(i) \$1,000, if such vehicle achieves at least 125 percent but less than 150 percent of the 2000 model year city fuel economy,

“(ii) \$2,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

“(iii) \$3,000, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

“(iv) \$4,000, if such vehicle achieves at least 200 percent but less than 225 per-

1 cent of the 2000 model year city fuel econ-
 2 omy, and

3 “(v) \$5,000, if such vehicle achieves
 4 at least 225 percent of the 2000 model
 5 year city fuel economy.

6 “(B) 2000 MODEL YEAR CITY FUEL ECON-
 7 OMY.—For purposes of subparagraph (A), the
 8 2000 model year city fuel economy with respect
 9 to a vehicle shall be determined in accordance
 10 with the following tables:

11 “(i) In the case of a passenger auto-
 12 mobile:

“If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 to 8,500 lbs	11.1 mpg.

13 “(ii) In the case of a light truck:

“If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg
4,500 lbs	17.3 mpg

“If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.0 mpg.

1 “(C) VEHICLE INERTIA WEIGHT CLASS.—

2 For purposes of subparagraph (B), the term
3 ‘vehicle inertia weight class’ has the same
4 meaning as when defined in regulations pre-
5 scribed by the Administrator of the Environ-
6 mental Protection Agency for purposes of the
7 administration of title II of the Clean Air Act
8 (42 U.S.C. 7521 et seq.).

9 “(3) NEW QUALIFIED FUEL CELL MOTOR VEHI-
10 CLE.—For purposes of this subsection, the term
11 ‘new qualified fuel cell motor vehicle’ means a motor
12 vehicle—

13 “(A) which is propelled by power derived
14 from 1 or more cells which convert chemical en-
15 ergy directly into electricity by combining oxy-
16 gen with hydrogen fuel which is stored on board
17 the vehicle in any form and may or may not re-
18 quire reformation prior to use,

19 “(B) which, in the case of a passenger
20 automobile or light truck for 2003 and later
21 model vehicles, has received a certificate of con-
22 formity under the Clean Air Act and meets or

1 exceeds the equivalent qualifying California low
 2 emission vehicle standard under section
 3 243(e)(2) of the Clean Air Act for that make
 4 and model year,

5 “(C) the original use of which commences
 6 with the taxpayer,

7 “(D) which is acquired for use or lease by
 8 the taxpayer and not for resale, and

9 “(E) which is made by a manufacturer.

10 “(c) APPLICATION WITH OTHER CREDITS.—The
 11 credit allowed under subsection (a) for any taxable year
 12 shall not exceed the excess (if any) of—

13 “(1) the sum of the regular tax plus the tax im-
 14 posed by section 55, over

15 “(2) the sum of the credits allowable under sec-
 16 tions 27, 29, and 30A, for the taxable year.

17 “(d) CREDIT MAY BE TRANSFERRED.—

18 “(1) IN GENERAL.—A taxpayer may transfer
 19 the credit allowable under this section through an
 20 assignment. Such transfer may be revoked only with
 21 the consent of the Secretary.

22 “(2) REGULATIONS.—The Secretary shall pre-
 23 scribe such regulations as necessary to ensure that
 24 any credit described in paragraph (1) is claimed

1 once and not reassigned by an assignee described in
2 paragraph (1).

3 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—

4 For purposes of this section—

5 “(1) MOTOR VEHICLE.—The term ‘motor vehi-
6 cle’ has the meaning given such term by section
7 30(c)(2).

8 “(2) CITY FUEL ECONOMY.—The Secretary of
9 Energy shall calculate the city fuel economy of fuel
10 cell motor vehicles which are passenger automobiles
11 and light trucks in a manner consistent with the
12 procedures for calculating the fuel economy for al-
13 ternative fuel automobiles under section 32905(a) of
14 title 49, United States Code.

15 “(3) RETAIL SALES PRICE.—The retail sales
16 price for any vehicle shall be determined under the
17 rules of section 4052(b).

18 “(4) OTHER TERMS.—The terms ‘automobile’,
19 ‘passenger automobile’, ‘light truck’, and ‘manufac-
20 turer’ have the meanings given such terms in regula-
21 tions prescribed by the Administrator of the Envi-
22 ronmental Protection Agency for purposes of the ad-
23 ministration of title II of the Clean Air Act (42
24 U.S.C. 7521 et seq.).

1 “(5) REDUCTION IN BASIS.—For purposes of
 2 this subtitle, the basis of any property for which a
 3 credit is allowable under subsection (a) shall be re-
 4 duced by the amount of such credit so allowed (de-
 5 termined without regard to subsection (c)).

6 “(6) RECAPTURE.—

7 “(A) IN GENERAL.—The Secretary shall,
 8 by regulations, provide for recapturing the ben-
 9 efit of any credit allowable under subsection (a)
 10 with respect to any property which ceases to be
 11 property eligible for such credit (including re-
 12 capture in the case of a lease period of less
 13 than the economic life of a vehicle).

14 “(B) ECONOMIC LIFE.—The regulations
 15 provided by the Secretary pursuant to subpara-
 16 graph (A) shall provide that the economic life
 17 of a vehicle is 4 years.

18 “(7) PROPERTY USED OUTSIDE UNITED
 19 STATES, ETC., NOT QUALIFIED.—No credit shall be
 20 allowed under subsection (a) with respect to any
 21 property referred to in section 50(b) or with respect
 22 to the portion of the cost of any property taken into
 23 account under section 179.

24 “(8) ELECTION TO NOT TAKE CREDIT.—No
 25 credit shall be allowed under subsection (a) for any

1 vehicle if the taxpayer elects to not have this section
 2 apply to such vehicle.

3 “(9) CARRYBACK AND CARRYFORWARD AL-
 4 LOWED.—

5 “(A) IN GENERAL.—If the credit amount
 6 allowable under subsection (a) for a taxable
 7 year exceeds the amount of the limitation under
 8 subsection (c) for such taxable year (in this
 9 paragraph referred to as the ‘unused credit
 10 year’), such excess shall be allowed as a credit
 11 carryback for each of the 3 taxable years begin-
 12 ning after January 1, 2003, which precede the
 13 unused credit year and a credit carryforward
 14 for each of the 20 taxable years which succeed
 15 the unused credit year.

16 “(B) RULES.—Rules similar to the rules of
 17 section 39 shall apply with respect to the credit
 18 carryback and credit carryforward under sub-
 19 paragraph (A).

20 “(10) INTERACTION WITH AIR QUALITY AND
 21 MOTOR VEHICLE SAFETY STANDARDS.—Unless oth-
 22 erwise provided in this section, a motor vehicle shall
 23 not be considered eligible for a credit under this sec-
 24 tion unless such vehicle is in compliance with—

1 “(A) the applicable provisions of the Clean
 2 Air Act for the applicable make and model year
 3 of the vehicle (or applicable air quality provi-
 4 sions of State law in the case of a State which
 5 has adopted such provision under a waiver
 6 under section 209(b) of the Clean Air Act), and

7 “(B) the motor vehicle safety provisions of
 8 sections 30101 through 30169 of title 49,
 9 United States Code.

10 “(f) REGULATIONS.—

11 “(1) IN GENERAL.—Except as provided in para-
 12 graph (2), the Secretary shall promulgate such regu-
 13 lations as necessary to carry out the provisions of
 14 this section.

15 “(2) COORDINATION IN PRESCRIPTION OF CER-
 16 TAIN REGULATIONS.—The Secretary of the Treas-
 17 ury, in coordination with the Secretary of Transpor-
 18 tation and the Administrator of the Environmental
 19 Protection Agency, shall prescribe such regulations
 20 as necessary to determine whether a motor vehicle
 21 meets the requirements to be eligible for a credit
 22 under this section.

23 “(g) TERMINATION.—This section shall not apply to
 24 any property placed in service after December 31, 2015.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 1016(a) is amended by striking
 2 “and” at the end of paragraph (27), by striking the
 3 period at the end of paragraph (28) and inserting “,
 4 and”, and by adding at the end the following new
 5 paragraph:

6 “(29) to the extent provided in section
 7 30B(e)(5).”.

8 (2) Section 55(c)(2) is amended by inserting
 9 “30B(c),” after “30(b)(3),”.

10 (3) Section 6501(m) is amended by inserting
 11 “30B(e)(8),” after “30(d)(4),”.

12 (4) The table of sections for subpart B of part
 13 IV of subchapter A of chapter 1 is amended by in-
 14 serting after the item relating to section 30A the fol-
 15 lowing new item:

“Sec. 30B. Fuel cell vehicle credit.”.

16 (c) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to property placed in service after
 18 December 31, 2002, in taxable years ending after such
 19 date.

20 **SEC. 102. NO DEPRECIATION LIMIT FOR HYDROGEN VEHI-**
 21 **CLES.**

22 (a) IN GENERAL.—Paragraph (1) of section 280F(a)
 23 (relating to limitation on amount of depreciation for lux-
 24 ury automobiles) is amended by adding at the end the fol-
 25 lowing new subparagraph—

1 “(D) HYDROGEN VEHICLES.—Subpara-
 2 graph (A) shall not apply to any motor vehicle
 3 with respect to which a credit is allowable under
 4 section 30B.”.

5 (b) EFFECTIVE DATE.—The amendment made by
 6 this section shall apply to property placed in service after
 7 December 31, 2002, in taxable years ending after such
 8 date.

9 **SEC. 103. MINIMUM FEDERAL FLEET REQUIREMENT.**

10 (a) Section 303(b) of the Energy Policy Act of 1992
 11 (42 U.S.C. 13212(b)) is amended by adding at the end
 12 the following:

13 “(4) HYDROGEN FUEL CELL VEHICLES.—

14 “(A) In each of the fiscal years specified in
 15 the following table, not fewer than the specified
 16 percentage of the number of vehicles acquired
 17 under paragraph (1)(D) for any Federal fleet of
 18 the specified size shall be hydrogen fuel cell ve-
 19 hicles that meet standards for performance, re-
 20 liability, cost, and maintenance established by
 21 the Secretary of Energy (unless the Secretary
 22 determines, after making best efforts to acquire
 23 such vehicles in a fiscal year, that such vehicles
 24 are not available at a purchase price that is less

1 than 150 percent of the purchase price of other
2 comparable alternative fueled vehicles):

“Fleet size:	Fiscal year:	Percentage:
100 or more	2006, 2007	5
100 or more	2008, 2009	10
100 or more	2010, 2011	20
50 or more	2012, 2013	20.

3 “(B) For purposes of this paragraph, the
4 term ‘comparable alternative fueled vehicle’
5 means a motor vehicle that is powered solely by
6 natural gas, fuels derived from biological mate-
7 rials, electricity, or any other fuel (other than
8 hydrogen) that the Secretary of Energy deter-
9 mines is not petroleum or petroleum-derived
10 and would yield substantial energy security and
11 substantial environmental benefits.”.

12 (b) REFUELING.—Section 304 of the Energy Policy
13 Act of 1992 (42 U.S.C. 13213) is amended—

14 (1) by redesignating subsection (b) as sub-
15 section (c);

16 (2) in the second sentence of subsection (a), by
17 striking “If publicly” and inserting the following:

18 “(b) COMMERCIAL ARRANGEMENTS.—

19 “(1) IN GENERAL.—If publicly”; and

20 (3) in subsection (b) (as designated by para-
21 graph (2)), by adding at the end the following:

1 “(2) MANDATORY ARRANGEMENTS.—

2 “(A) IN GENERAL.—In a case in which
3 publicly available fueling facilities are not con-
4 venient or accessible to the locations of 2 or
5 more Federal fleets for which hydrogen fuel cell
6 vehicles are required to be purchased under sec-
7 tion 303(b)(4), the Federal agency for which
8 the Federal fleets are maintained (or the Fed-
9 eral agencies for which the Federal fleets are
10 maintained, acting jointly under a memo-
11 randum of agreement providing for cost shar-
12 ing) shall enter into a commercial arrangement
13 as provided in paragraph (1).

14 “(B) SUNSET.—Subparagraph (A) ceases
15 to be effective at the end of fiscal year 2013.”.

16 **SEC. 104. REPLACEMENT OF RELIANCE ON FOREIGN OIL**
17 **THROUGH HYDROGEN POWERED FUEL**
18 **CELLS.**

19 (a) GOAL.—It shall be a goal to replace reliance on
20 30,000,000 barrels of foreign oil through the use of hydro-
21 gen powered fuel cells by December 31, 2012.

22 (b) FUEL CELL MOTOR VEHICLE DEFINED.—For
23 the purposes of this section, the term “fuel cell motor vehi-
24 cle” means a motor vehicle that is propelled by power de-
25 rived from one or more cells which convert chemical energy

1 directly into electricity by combining oxygen with hydrogen
 2 fuel which is stored on board the vehicle in any form and
 3 may or may not require reformation prior to use.

4 (c) ADVISORY COMMISSION ON ACHIEVEMENT OF
 5 GOAL.—

6 (1) ESTABLISHMENT AND DUTIES.—

7 (A) ESTABLISHMENT.—The Secretary of
 8 Transportation shall establish an advisory com-
 9 mission to provide the Secretary and Congress
 10 with advice regarding the commercialization of
 11 fuel cell motor vehicles, including the achieve-
 12 ment of the goal set forth in subsection (a).

13 (B) DUTIES.—The commission shall have
 14 the following duties:

15 (i) Make recommendations for uni-
 16 form industry codes and standards for fuel
 17 cell motor vehicles and hydrogen fueling
 18 equipment or a process for developing such
 19 codes and standards.

20 (ii) Make recommendations on how to
 21 achieve the goal set forth in subsection (a).

22 (iii) Identify any impediments to
 23 achieving such goal.

1 (iv) Make any other recommendations
2 relating to such goal that the commission
3 determines appropriate.

4 (2) MEMBERSHIP AND CHAIRMAN.—The com-
5 mission shall be composed of 5 members appointed
6 by the Secretary, as follows:

7 (A) One representative of fuel cell motor
8 vehicle manufacturers in the United States.

9 (B) One representative of fuel cell motor
10 vehicle manufacturers outside the United
11 States.

12 (C) One person from academia who is a
13 scientist with particular expertise in—

14 (i) fuel cell technology for the propul-
15 sion of motor vehicles; and

16 (ii) the manufacture of fuel cell motor
17 vehicles.

18 (D) One representative of an environ-
19 mental protection interest group having a sig-
20 nificantly numerous nationwide membership in
21 the United States.

22 (E) One representative of the Secretary,
23 who shall serve as Chairman of the commission.

24 (3) PERIOD OF APPOINTMENT; VACANCIES.—
25 Members shall be appointed for the life of the com-

1 mission. Any vacancy in the commission shall not af-
2 fect its powers, but shall be filled in the same man-
3 ner as the original appointment.

4 (4) MEETINGS.—

5 (A) SCHEDULING.—

6 (i) IN GENERAL.—The commission
7 shall meet at the call of the Chairman.

8 (ii) MANDATORY MEETING IF GOAL
9 NOT MET.—If the goal specified in sub-
10 section (a) is not achieved by December
11 31, 2013, the commission shall meet not
12 later than January 31, 2014, and within
13 90 days of such meeting shall make rec-
14 ommendations to the Secretary and Con-
15 gress on how to achieve such goal at the
16 earliest possible date.

17 (B) QUORUM.—A majority of the members
18 of the commission shall constitute a quorum,
19 but a lesser number of members may hold hear-
20 ings.

21 (5) POWERS.—

22 (A) HEARINGS.—The commission may
23 hold such hearings, sit and act at such times
24 and places, take such testimony, and receive

1 such evidence as the commission considers ad-
2 visable to carry out this section.

3 (B) INFORMATION FROM FEDERAL AGEN-
4 CIES.—The commission may secure directly
5 from any Federal department or agency such
6 information as the commission considers nec-
7 essary to carry out this section. Upon request
8 of the Chairman of the commission, the head of
9 such department or agency shall furnish such
10 information to the commission.

11 (C) POSTAL SERVICES.—The commission
12 may use the United States mails in the same
13 manner and under the same conditions as other
14 departments and agencies of the Federal Gov-
15 ernment.

16 (6) PERSONNEL MATTERS.—

17 (A) COMPENSATION OF MEMBERS.—Each
18 member of the commission who is not an officer
19 or employee of the Federal Government shall be
20 compensated at a rate equal to the daily equiva-
21 lent of the annual rate of basic pay prescribed
22 for level IV of the Executive Schedule under
23 section 5315 of title 5, United States Code, for
24 each day (including travel time) during which
25 such member is engaged in the performance of

1 the duties of the commission. All members of
2 the commission who are officers or employees of
3 the United States shall serve without compensa-
4 tion in addition to that received for their serv-
5 ices as officers or employees of the United
6 States.

7 (B) TRAVEL EXPENSES.—The members of
8 the commission shall be allowed travel expenses,
9 including per diem in lieu of subsistence, at
10 rates authorized for employees of agencies
11 under subchapter I of chapter 57 of title 5,
12 United States Code, while away from their
13 homes or regular places of business in the per-
14 formance of services for the commission.

15 (C) STAFF.—

16 (i) IN GENERAL.—The Chairman of
17 the commission may, without regard to the
18 civil service laws and regulations, appoint
19 and terminate an executive director and
20 such other additional personnel as may be
21 necessary to enable the commission to per-
22 form its duties. The employment of an ex-
23 ecutive director shall be subject to con-
24 firmation by the commission.

1 (ii) COMPENSATION.—The Chairman
2 of the commission may fix the compensa-
3 tion of the executive director and other
4 personnel without regard to chapter 51
5 and subchapter III of chapter 53 of title 5,
6 United States Code, relating to classifica-
7 tion of positions and General Schedule pay
8 rates, except that the rate of pay for the
9 executive director and other personnel may
10 not exceed the rate payable for level V of
11 the Executive Schedule under section 5316
12 of such title.

13 (D) DETAIL OF GOVERNMENT EMPLOY-
14 EES.—Any Federal Government employee may
15 be detailed to the commission without reim-
16 bursement, and such detail shall be without
17 interruption or loss of civil service status or
18 privilege.

19 (E) PROCUREMENT OF TEMPORARY AND
20 INTERMITTENT SERVICES.—The Chairman of
21 the commission may procure temporary and
22 intermittent services under section 3109(b) of
23 title 5, United States Code, at rates for individ-
24 uals which do not exceed the daily equivalent of
25 the annual rate of basic pay prescribed for level

1 V of the Executive Schedule under section 5316
2 of such title.

3 (7) TERMINATION OF COMMISSION.—The com-
4 mission shall terminate on the earlier of—

5 (A) the date that is 90 days after the date
6 on which the commission submits to the Sec-
7 retary of Transportation and Congress a find-
8 ing that the goal set forth in subsection (a) has
9 been achieved; or

10 (B) the date that is 90 days after the date
11 on which the commission submits the rec-
12 ommendations required under clause (ii) of
13 paragraph (4)(A).

14 **TITLE II—HYDROGEN FUEL**

15 **SEC. 201. CREDIT FOR RETAIL SALE OF HYDROGEN FUEL** 16 **AS MOTOR VEHICLE FUEL.**

17 (a) IN GENERAL.—Subpart D of part IV of sub-
18 chapter A of chapter 1 (relating to business related cred-
19 its) is amended by inserting after section 40 the following
20 new section:

21 **“SEC. 40A. CREDIT FOR RETAIL SALE OF HYDROGEN AS** 22 **MOTOR VEHICLE FUEL.**

23 “(a) GENERAL RULE.—For purposes of section 38,
24 the hydrogen fuel retail sales credit for any taxable year
25 is an amount equal to the greater of—

1 “(1) 20 percent of the price of hydrogen, or
 2 “(2) 50 cents for each quantity of hydrogen
 3 having a Btu content of 115,000,
 4 sold at retail by the taxpayer during such year as a fuel
 5 to propel any hydrogen fuel cell vehicle.

6 “(b) DEFINITIONS.—For purposes of this section—

7 “(1) HYDROGEN FUEL CELL VEHICLE.—The
 8 term ‘hydrogen fuel cell vehicle’ has the meaning
 9 given such term in section 136A.

10 “(2) SOLD AT RETAIL.—

11 “(A) IN GENERAL.—The term ‘sold at re-
 12 tail’ means the sale, for a purpose other than
 13 resale, after manufacture, production, or impor-
 14 tation.

15 “(B) USE TREATED AS SALE.—If any per-
 16 son uses hydrogen (including any use after im-
 17 portation) as a fuel to propel any motor vehicle
 18 (as defined in section 30(c)(2)) before such fuel
 19 is sold at retail, then such use shall be treated
 20 in the same manner as if such fuel were sold
 21 at retail as a fuel to propel such a vehicle by
 22 such person.

23 “(c) PASS-THRU IN THE CASE OF ESTATES AND
 24 TRUSTS.—Under regulations prescribed by the Secretary,

1 rules similar to the rules of subsection (d) of section 52
2 shall apply.

3 “(d) TERMINATION.—This section shall not apply to
4 any fuel sold at retail after December 31, 2013.”.

5 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
6 tion 38(b) (relating to current year business credit) is
7 amended by striking “plus” at the end of paragraph (14),
8 by striking the period at the end of paragraph (15) and
9 inserting “, plus”, and by adding at the end the following
10 new paragraph:

11 “(16) the hydrogen fuel retail sales credit deter-
12 mined under section 40A(a).”.

13 (c) TRANSITIONAL RULE.—Section 39(d) (relating to
14 transitional rules) is amended by adding at the end the
15 following new paragraph:

16 “(11) NO CARRYBACK OF SECTION 40A CREDIT
17 BEFORE EFFECTIVE DATE.—No portion of the un-
18 used business credit for any taxable year which is
19 attributable to the hydrogen fuel retail sales credit
20 determined under section 40A(a) may be carried
21 back to a taxable year ending before January 1,
22 2003.”.

23 (d) CLERICAL AMENDMENT.—The table of sections
24 for subpart D of part IV of subchapter A of chapter 1

1 is amended by inserting after the item relating to section
 2 40 the following new item:

“Sec. 40A. Credit for retail sale of hydrogen as motor vehicle fuel.”.

3 (e) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to fuel sold at retail after Decem-
 5 ber 31, 2002, in taxable years ending after such date.

6 **SEC. 202. CREDIT FOR PRODUCTION OF HYDROGEN FUEL.**

7 (a) HYDROGEN PRODUCED FROM ANY SOURCE.—
 8 Section 29 (relating to credit for producing fuel from non-
 9 conventional sources) is amended by adding at the end the
 10 following new subsection:

11 “(h) HYDROGEN FUEL.—

12 “(1) HYDROGEN FUEL PRODUCED FROM ANY
 13 SOURCE.—There shall be allowed as a credit against
 14 the tax imposed by this chapter for the taxable year
 15 an amount equal to—

16 “(A) \$10, multiplied by

17 “(B) each quantity of hydrogen having a
 18 Btu content of 5,800,000—

19 “(i) sold by the taxpayer to an unre-
 20 lated person during the taxable year, and

21 “(ii) the production of which is attrib-
 22 utable to the taxpayer.

23 “(2) ADDITIONAL CREDIT FOR PRODUCTION
 24 FROM RENEWABLE SOURCES.—

1 “(A) IN GENERAL.—In the case of hydro-
 2 gen which is produced from a renewable source,
 3 paragraph (1)(A) shall be applied by sub-
 4 stituting ‘\$20’ for ‘\$10’.

5 “(B) RENEWABLE SOURCE.—

6 “(i) IN GENERAL.—The term ‘renew-
 7 able source’ means solar, wind, ocean, geo-
 8 thermal energy, biomass, landfill gas, or
 9 incremental hydropower.

10 “(ii) INCREMENTAL HYDROPOWER.—
 11 The term ‘incremental hydropower’ means
 12 additional generating capacity achieved
 13 from increased efficiency or additions of
 14 new capacity at a hydroelectric facility in
 15 existence on the date of enactment of this
 16 paragraph.

17 “(3) EXCLUSION ON SALE FOR CERTAIN
 18 USES.—No credit shall be allowed under this sub-
 19 section for hydrogen fuel sold by the taxpayer the
 20 use of which is for the production or refining of
 21 other petroleum products.

22 “(4) TERMINATION.—This subsection shall not
 23 apply to hydrogen fuel produced after December 31,
 24 2013.”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to hydrogen produced after Decem-
 3 ber 31, 2002, in taxable years ending after such date.

4 **SEC. 203. TAX HOLIDAY FOR HYDROGEN FUEL.**

5 (a) IN GENERAL.—Subchapter B of chapter 65 (re-
 6 lating to abatements, credits, and refunds) is amended by
 7 adding at the end the following new section:

8 **“SEC. 6429. FUELS USED IN HYDROGEN POWERED VEHI-**
 9 **CLES.**

10 “(a) IN GENERAL.—If any fuel taxable under section
 11 4041 (relating to imposition of tax on special fuels) or
 12 4081 (relating to imposition of tax on gasoline) is used
 13 to produce hydrogen as a means of propelling a hydrogen
 14 fuel cell vehicle during the applicable period, the Secretary
 15 shall pay (without interest) to the ultimate purchaser of
 16 such fuel an amount equal to the amount determined by
 17 multiplying the number of gallons so used by the rate at
 18 which tax was imposed on such fuel under section 4041
 19 or 4081.

20 “(b) APPLICABLE PERIOD.—The term ‘applicable pe-
 21 riod’ means the period beginning after December 31,
 22 2002, and ending before January 1, 2014.

23 “(c) HYDROGEN FUEL CELL VEHICLE.—The term
 24 ‘hydrogen fuel cell vehicle’ has the meaning given such
 25 term by section 136A(b)(1).”.

1 (b) CONFORMING AMENDMENT.—The table of sec-
 2 tions for subchapter B of chapter 65 is amended by insert-
 3 ing after the item relating to section 6428 the following
 4 new item:

“Sec. 6429. Fuels used in hydrogen powered vehicles.”.

5 **SEC. 204. SENSE OF CONGRESS REGARDING HYDROGEN**
 6 **FUEL TAXES.**

7 It is the sense of Congress that no tax should be im-
 8 posed on hydrogen fuel before January 1, 2014.

9 **SEC. 205. HYDROGEN FUELING FRINGE BENEFIT.**

10 (a) IN GENERAL.—Paragraph (1) of section 132(c)
 11 (relating to qualified employee discounts) is amended by
 12 striking “or” at the end of subparagraph (A), by striking
 13 the period and inserting “, or” at the end of subparagraph
 14 (B), and by adding at the end the following new subpara-
 15 graph:

16 “(C) in the case of hydrogen fuel, 50 per-
 17 cent of the price at which such fuel is being of-
 18 fered by the employer to customers.”.

19 (b) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to taxable years beginning after
 21 December 31, 2002.

22 **SEC. 206. EXCLUSION OF EARNINGS FROM HYDROGEN**
 23 **FUEL SALES.**

24 (a) IN GENERAL.—Part III of subchapter B of chap-
 25 ter 1 (relating to items specifically excluded from gross

1 income) is amended by inserting after section 136 the fol-
 2 lowing new section:

3 **“SEC. 136A. INCOME FROM HYDROGEN FUEL SALES.**

4 “(a) EXCLUSION.—Gross income shall not include in-
 5 come attributable to the sale of hydrogen fuel sold for use
 6 in a hydrogen fuel cell vehicle.

7 “(b) DEFINITION OF HYDROGEN FUEL CELL VEHI-
 8 CLE.—For purposes of this section, the term ‘hydrogen
 9 fuel cell vehicle’ means a motor vehicle (as defined in sec-
 10 tion 30(c)(2)) which is propelled by power derived from
 11 1 or more cells which convert chemical energy directly into
 12 electricity by combining oxygen with hydrogen fuel which
 13 is stored on board the vehicle in any form and may or
 14 may not require reformation prior to use.

15 “(c) TERMINATION.—This section shall not apply to
 16 income attributable to sales after December 31, 2013.”.

17 (b) CONFORMING AMENDMENT.—The table of sec-
 18 tions for subpart B of part III of subchapter B of chapter
 19 1 is amended by inserting after the item relating to section
 20 136 the following new item:

“Sec. 136A. Income from hydrogen fuel sales.”.

21 (c) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to income received after December
 23 31, 2002, in taxable years ending after such date.

1 **SEC. 207. CREDIT FOR USE OF ETHANOL OR RENEWABLE**
2 **MOTOR FUEL TO PRODUCE HYDROGEN FUEL.**

3 (a) DEFINITIONS.—In this section:

4 (1) GALLON-EQUIVALENT UNIT.—The term
5 “gallon-equivalent unit” means a quantity of ethanol
6 or renewable motor fuel used in the production of
7 hydrogen fuel that the Secretary of Energy deter-
8 mines is equivalent in energy value to the use of a
9 gallon of ethanol or renewable motor fuel (whichever
10 is applicable) used in the production of motor fuel.

11 (2) HYDROGEN FUEL.—The term “hydrogen
12 fuel” means hydrogen fuel produced for use in a hy-
13 drogen fuel vehicle.

14 (b) CREDIT FOR USE OF HYDROGEN FUEL.—In sat-
15 isfaction of all or part of the requirement under any Fed-
16 eral law (enacted before, on, or after the date of enactment
17 of this Act) under which a refiner of motor fuel is required
18 to use a gallon of ethanol or renewable motor fuel in the
19 production of motor fuel in any year or an importer of
20 motor fuel is required to import a gallon of ethanol (in-
21 cluding ethanol blended with motor fuel) or renewable
22 motor fuel in any year, a refiner or importer shall receive
23 credit for 100 gallons of ethanol or renewable motor fuel
24 (whichever is applicable) for each gallon-equivalent unit
25 used to produce refined or imported hydrogen fuel.

1 **TITLE III—HYDROGEN FUELING**
 2 **INFRASTRUCTURE**

3 **SEC. 301. CREDIT FOR INSTALLATION OF HYDROGEN FUEL-**
 4 **ING STATIONS.**

5 (a) IN GENERAL.—Subpart B of part IV of sub-
 6 chapter A of chapter 1 (relating to foreign tax credit, etc.),
 7 as amended by this Act, is amended by adding at the end
 8 the following new section:

9 **“SEC. 30C. HYDROGEN FUEL CELL VEHICLE REFUELING**
 10 **PROPERTY CREDIT.**

11 “(a) CREDIT ALLOWED.—There shall be allowed as
 12 a credit against the tax imposed by this chapter for the
 13 taxable year an amount equal to 50 percent of the amount
 14 paid or incurred by the taxpayer during the taxable year
 15 for qualified hydrogen fuel cell vehicle refueling property
 16 and the installation thereof.

17 “(b) YEAR CREDIT ALLOWED.—The credit allowed
 18 under subsection (a) shall be allowed in the taxable year
 19 in which the qualified hydrogen fuel cell vehicle refueling
 20 property is placed in service by the taxpayer.

21 “(c) DEFINITION OF QUALIFIED HYDROGEN FUEL
 22 CELL VEHICLE REFUELING PROPERTY.—The term
 23 ‘qualified hydrogen fuel cell vehicle refueling property’
 24 means any property (not including a building and its
 25 structural components) if—

1 “(1) such property is of a character subject to
2 the allowance for depreciation,

3 “(2) the original use of such property begins
4 with the taxpayer, and

5 “(3) such property is for the production, stor-
6 age, or dispensing of hydrogen fuel into the fuel
7 tank of a motor vehicle propelled by such fuel.

8 “(d) APPLICATION WITH OTHER CREDITS.—The
9 credit allowed under subsection (a) for any taxable year
10 shall not exceed the excess (if any) of—

11 “(1) the regular tax for the taxable year re-
12 duced by the sum of the credits allowable under sub-
13 part A and sections 27, 29, 30, and 30B, over

14 “(2) the tentative minimum tax for the taxable
15 year.

16 “(e) BASIS REDUCTION.—For purposes of this title,
17 the basis of any property shall be reduced by the portion
18 of the cost of such property taken into account under sub-
19 section (a).

20 “(f) NO DOUBLE BENEFIT.—No deduction shall be
21 allowed under section 179A or 179B with respect to any
22 property with respect to which a credit is allowed under
23 subsection (a).

24 “(g) CARRYFORWARD ALLOWED.—

1 “(1) IN GENERAL.—If the credit amount allow-
 2 able under subsection (a) for a taxable year exceeds
 3 the amount of the limitation under subsection (d)
 4 for such taxable year (referred to as the ‘unused
 5 credit year’ in this subsection), such excess shall be
 6 allowed as a credit carryforward for each of the 20
 7 taxable years following the unused credit year.

8 “(2) RULES.—Rules similar to the rules of sec-
 9 tion 39 shall apply with respect to the credit
 10 carryforward under paragraph (1).

11 “(h) SPECIAL RULES.—Rules similar to the rules of
 12 paragraphs (4) and (5) of section 179A(e) shall apply.

13 “(i) REGULATIONS.—The Secretary shall prescribe
 14 such regulations as necessary to carry out the provisions
 15 of this section.

16 “(j) TERMINATION.—This section shall not apply to
 17 any property placed in service after December 31, 2013.”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) Section 1016(a), as amended by this Act, is
 20 amended by striking “and” at the end of paragraph
 21 (28), by striking the period at the end of paragraph
 22 (29) and inserting “, and”, and by adding at the
 23 end the following new paragraph:

24 “(30) to the extent provided in section
 25 30C(e).”.

1 (2) Section 55(c)(2), as amended by this Act, is
2 amended by inserting “30C(d),” after “30B(c),”.

3 (3) The table of sections for subpart B of part IV
4 of subchapter A of chapter 1, as amended by this Act,
5 is amended by inserting after the item relating to section
6 30B the following new item:

“Sec. 30C. Hydrogen fuel cell vehicle refueling property credit.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to property placed in service after
9 September 30, 2002, in taxable years ending after such
10 date.

11 **SEC. 302. EXCLUSION OF EARNINGS FROM HYDROGEN**
12 **FUELING EQUIPMENT SALES.**

13 (a) IN GENERAL.—Subsection (a) of section 136A
14 (as added by section 206) is amended—

15 (1) by striking “of hydrogen” and inserting
16 “of—

17 “(1) hydrogen”,

18 (2) by striking the period and inserting “,
19 and”, and

20 (3) by inserting at the end the following new
21 paragraph:

22 “(2) hydrogen fueling equipment suitable for
23 vehicle refueling.”.

1 (b) DEFINITION OF HYDROGEN FUELING EQUIP-
 2 MENT.—Subsection (b) of section 136A (as added by sec-
 3 tion 206) is amended—

4 (1) by striking “DEFINITION OF HYDROGEN
 5 FUEL CELL VEHICLE.—” and inserting “DEFINI-
 6 TIONS.—

7 “(1) HYDROGEN FUEL CELL VEHICLE.—”, and
 8 (2) by inserting at the end the following new
 9 paragraph:

10 “(2) HYDROGEN FUELING EQUIPMENT.—For
 11 purposes of this section, the term ‘hydrogen fueling
 12 equipment’ means equipment used in the process of
 13 reforming, storing, supplying, or replenishing hydro-
 14 gen fuel used in a hydrogen fuel cell vehicle.”.

15 (c) CONFORMING AMENDMENTS.—

16 (1) SECTION HEADING.—The heading of section
 17 136A is amended by inserting “**AND HYDROGEN**
 18 **FUELING EQUIPMENT**” before “**SALES**”.

19 (2) TABLE OF SECTIONS.—The item relating to
 20 section 136A in the table of sections for subpart B
 21 of part III of subchapter B of chapter 1 is amended
 22 to read as follows:

“Sec. 136A. Income from hydrogen fuel and hydrogen fueling equipment
 sales.”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 December 31, 2002.

4 **SEC. 303. EXTENSION OF DEDUCTION FOR HYDROGEN**
 5 **FUELING INFRASTRUCTURE.**

6 Section 179A(f) (relating to the termination of de-
 7 ductions for clean-fuel vehicles and certain refueling prop-
 8 erty) is amended—

9 (1) by striking “This section” and inserting:

10 “(1) QUALIFIED CLEAN-FUEL VEHICLE PROP-
 11 erty.—The deduction under subparagraph (A) of
 12 subsection (a)(1)”, and

13 (2) by adding at the end the following:

14 “(2) QUALIFIED CLEAN-FUEL VEHICLE RE-
 15 FUELING PROPERTY.—The deduction under sub-
 16 paragraph (B) of subsection (a)(1) shall not apply to
 17 any property placed in service after December 31,
 18 2013.”.

19 **SEC. 304. DEDUCTION FOR REFUELING USE OF HYDROGEN**
 20 **FUEL CELLS.**

21 (a) IN GENERAL.—Part VI of subchapter B of chap-
 22 ter 1 (relating to itemized deduction for individuals and
 23 corporations) is amended by adding after section 179A the
 24 following new section:

1 **“SEC. 179B. DEDUCTION FOR COPRODUCTION OF HYDRO-**
 2 **GEN FUEL CELLS.**

3 “(a) IN GENERAL.—There shall be allowed as a de-
 4 duction an amount equal to the cost of any qualified hy-
 5 drogen refueling property in the taxable year.

6 “(b) LIMITATION.—The aggregate amount which
 7 may be taken into account under this section with respect
 8 to any qualified hydrogen refueling property shall not ex-
 9 ceed the excess (if any) of—

10 “(1) \$300,000, over

11 “(2) the aggregate amount taken into account
 12 under this section for the qualified hydrogen refuel-
 13 ing property for all preceding taxable years.

14 “(c) DEFINITIONS.—For the purposes of this sec-
 15 tion—

16 “(1) QUALIFIED HYDROGEN REFUELING PROP-
 17 ERTY.—

18 “(A) IN GENERAL.—The term ‘qualified
 19 hydrogen refueling property’ means a building
 20 that—

21 “(i) uses hydrogen fuel cells to pro-
 22 vide power to the building,

23 “(ii) has facilities that allow hydrogen
 24 to be used for public refueling of hydrogen
 25 fuel cell vehicles, and

1 “(iii) has a building plan filed with
 2 the Secretary in accordance with such reg-
 3 ulations as the Secretary may prescribe.

4 “(B) BUILDING.—As used in paragraph
 5 (1), the term ‘building’ means any building, ex-
 6 cept that such building may not be within .5
 7 miles of another qualified hydrogen refueling
 8 property with respect to which a credit under
 9 this section is allowed to the taxpayer.

10 “(2) HYDROGEN FUEL CELL VEHICLE.—The
 11 term ‘hydrogen fuel cell vehicle’ has the meaning
 12 given such term in section 136A(b)(1).

13 “(d) RECAPTURE.—The Secretary shall, by regula-
 14 tions, provide for recapturing the benefit of the deduction
 15 allowable under this section if such qualified hydrogen re-
 16 fueling property is not placed in service.

17 “(e) TERMINATION.—This section shall not apply to
 18 any property placed in service after December 31, 2013.”.

19 (b) CONFORMING AMENDMENT.—The table of sec-
 20 tions for part VI of subchapter B of chapter 1 is amended
 21 by inserting after the item relating to section 179A the
 22 following new item:

“Sec. 179B. Deduction for coproduction of hydrogen fuel cells.”.

23 (c) EFFECTIVE DATE.—The amendments made by
 24 this section shall apply in taxable years beginning after
 25 December 31, 2002.

1 **SEC. 305. ACCELERATED DEPRECIATION FOR QUALIFIED**
 2 **HYDROGEN FUELING EQUIPMENT.**

3 (a) RECOVERY PERIOD.—Subparagraph (B) of sec-
 4 tion 168(e)(3) (relating to 5-year property) is amended
 5 by striking “and” in clause (v), by striking the period and
 6 inserting “, and” in subclause (III) of clause (vi), and by
 7 adding at the end the following new clause:

8 “(vii) any qualified hydrogen fueling equip-
 9 ment, as defined in subsection (l)(2).”.

10 (b) DEPRECIATION ALLOWANCE.—Section 168 is
 11 amended by adding at the end the following new sub-
 12 section:

13 “(l) SPECIAL ALLOWANCE FOR INVESTMENTS IN RE-
 14 FORMERS AND OTHER HYDROGEN FUELING APPLI-
 15 ANCES.—

16 “(1) ADDITIONAL ALLOWANCE.—In the case of
 17 qualified hydrogen fueling equipment—

18 “(A) the depreciation deduction provided
 19 by section 167(a) for the taxable year in which
 20 such property is placed in service shall include
 21 an allowance equal to 25 percent of the ad-
 22 justed basis of the qualified hydrogen fueling
 23 equipment, and

24 “(B) the adjusted basis of the qualified
 25 property shall be reduced by the amount of
 26 such deduction before computing the amount

1 otherwise allowable as a depreciation deduction
 2 under this chapter for such taxable year and
 3 any subsequent taxable year.

4 “(2) QUALIFIED HYDROGEN FUELING EQUIP-
 5 MENT.—For purposes of this subsection:

6 “(A) IN GENERAL.—The term ‘qualified
 7 hydrogen fueling equipment’ means storage
 8 containers, reformers, fuel processors, and hy-
 9 drogen compressors.

10 “(B) REFORMER.—The term ‘reformer’
 11 means a device used to produce or extract hy-
 12 drogen from another source in order to provide
 13 hydrogen fuel to power a hydrogen fuel cell ve-
 14 hicle (as defined in section 136A(b)(1)).

15 “(3) TERMINATION.—This subsection shall not
 16 apply to equipment placed in service after December
 17 31, 2007.”.

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to taxable years beginning after
 20 December 31, 2002.

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